*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+W.P.No.13992 of 2007

% 21-9-2007

Jakka Taraka Mallikharjuna Rao
s/o.Appa Rao, aged about 39 years,
r/o.4th floor, Siva Enclave,
S.S.S. colony, Gollapudi,
Vijayawada,
Krishna District. ..
Petitioner

And

$ The State of A.P.
Represented by its Principal Secretary,
Revenue, Endowments, Secretariat,
Hyderabad and others ..
Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri Vallalacheruvu Hanumantha Rao

^ Counsel for respondents 1 to 4 : Government Pleader for Endowments

Counsel for respondent No.5 : Sri P.Rajasekhar

?CASES REFERRED :

[1] **AIR 1976 S.C. 578**

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.13992 of 2007

Date : 21-9-2007

Between :

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S.S.S. colony, Gollapudi,
Vijayawada,
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THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.13992 of 2007

ORDER:

1. This Court ordered Notice before admission on 3-7-2007 and also made an order:

> *"Pending further orders, status quo obtaining as on today as to the management of Sri Sivaramakrishna Kshetram, Vijayawada shall be maintained for a period of one week from today"*.

Further, the said interim order was extended for one week from 10-7-2007 and further on 13-7-2007 and also on 20-7-2007 the interim order was extended from time to time. On 14-9-2007, this Court made the following order:

> "*The authority of Principal Secretary to Government to make the impugned order is called in question. The Counsel for vacate petitioner is*

raising a preliminary objection relating to the very maintainability of the Writ Petition on the ground that the writ petitioner is not an aggrieved party and the writ petitioner has no locus standi to question the same"

and issued *rule nisi* and called for records.

2. W.V.M.P.No.1847/2007 is filed by the 5th respondent to vacate the interim order specified above.

3. Heard Sri Vellalacheruvu Hanumantha Rao, the learned Counsel representing the writ petitioner, the learned Government Pleader for Endowments and also Sri P.Rajasekhar, the learned Counsel representing the 5th respondent.

4. The writ petitioner Jakka Taraka Mallikharjuna Rao, filed the present Writ Petition praying for a Writ of Mandamus declaring the action of the 1st respondent in issuing the proceedings Memo No.21225/Endts/RV(1)2007-1, dated 12-6-2007 as illegal, arbitrary and violative of provisions of A.P. Charitable and Hindu Religious Institutions and Endowments Act 1987 (hereinafter in short referred to as "Act") and consequently to set aside the same and to pass such other suitable orders.

5. It is stated that the petitioner is a devotee of Ramanamasankeerthana Sangham Temples at

Vijayawada and thus the petitioner is well acquainted with the facts of the case. It is further stated that there are 9 temples in one compound at Vijayawada since more than 50 years, established by one Vavilala Srinivasa Murthy and these temples came to be popularly known as Sri Sivaramakrishna Kshetram and it is also known as Sivarama Krishna Kshetram and it is an establishment of 9 Gods in one compound. It is further stated that some of the interested persons had registered a Society in the same name as Sri Ramanama Sankeerthana Sangham, hereinafter referred to as “Sangham”, some time on 1961 and started managing the affairs of the temple as if they are the founder members of the said temples. It is further stated that the said Kshetram was taken over by the Department of Endowments during 1970’s and thereafter Executive Officers were appointed. However the said Executive Officers were allowed to work for a short while and were being transferred or removed at the instance of the members of the Sangham who had developed vested interest over the temple and its properties which had grown over a period of time. It is also further stated that the management of the said Kshetram by the members of the Society was not to the liking of the devotees and as such the devotes had been resisting the management of

the Kshetram by the members from time to time and had been requesting the Department to appoint a regular Executive Officer to man and manage the affairs of the Kshetram. It is also further stated that the members of the Sangham who registered the Society had developed vested interest in the properties of the Kshetram and are not allowing appointment of Executive Officers and in that direction the devotees are also told that the members had filed a Writ Petition i.e., W.P.No.7347/1993 before this Court challenging the appointment of the Executive Officers and this Court upheld the G.O. appointing the Executive Officers to various temples including the Kshetram. It is also further stated that it had been reliably learnt and which the petitioner believes it to be true that the members of the Sangham also represented to the District Registrar, Krishna, Machilipatnam requesting him to take on file by acknowledging the members of the governing body members purported to have been elected on 13-6-2004 and the District Registrar returned the said request of the members with objections asking the Society to produce the Audit reports and the General Body members list of the members of the Sangham from 1993 onwards. It is further stated that all the said exercise was done while W.P.No.7347/1993 was pending. It is also stated that it is further learnt that the Sangham did not

produce any Audit reports or General Body members registers and it became a defunct Sangham. It is also further stated that the members of the Sangham having failed in all their attempts to gain control over the temples had adopted a dubious method of approaching the 1st respondent for adoption of the Kshetram with Sri Dakshinamnaya Shrungeri Sarada Peetham at Nallakunta, Hyderabad so that the members of the Society will be in a position to gain control over the Sangham and do away with the system of Executive Officers and other staff. The appointment of Executive Officers to the temple is not being digested by the members of the Sangham. It is also further stated that the Principal Secretary who has no power under the Act accepted the proposal submitted by the members of the Society without any enquiry and without calling for report from the concerned Deputy Commissioner of Endowments and passed the impugned orders. Thus it is stated that the interest of the devotees is affected by such orders under the Act. It is also further stated that the petitioner had been advised to submit that as per Section 145 of the Act, adoption or amalgamation of Institution can be done only by the Commissioner and a procedure had been laid down under the Act before ordering for adoption

or amalgamation. From the foregoing actions of the 1st respondent it appears that on the face of it, the act of the 1st respondent is contrary to the provisions of the Act and the same cannot be sustained and the same is liable to be set aside. It is also further stated that the petitioner had been given to understand that the Institution to which the Sangham is being sought to be adopted itself is not in a condition to manage its own affairs at Hyderabad and as such the question of adopting the Institution which is at Vijayawada will not be feasible and not in the interest of the Kshetram and devotees. The action of the 1st respondent in proposing to give direction to the Commissioner directing him to take action is nothing but a direction to see that the process of adoption is completed without following the procedure contemplated under the Act. It is also further stated that the income of the Sangham will be in Lakhs and as such sufficient to manage the affairs of the Sangham being under the control of Endowments Department and the staff appointed by the Endowments Department. To do away with the appointment of the staff of the Endowments Department including Executive Officers is nothing but the *modus operandi* of the members of the Sangham to manage its affairs. It is also further stated that this Court in

W.P.No.7347/93 directed the appointment of Executive Officer and its staff which is not being digested by the members of the Sangham and as such the members had adopted this *modus operandi* of doing away with the appointments that were made pursuant to the directions of this Court and this game of the members of the Sangham cannot be allowed and the interest of the Kshetrams to be protected. The so-called Society which was registered by the members who developed vested interest over the temple and its properties since became defunct cannot have a say over the affairs of the temple and they cannot represent the temple and all that they are interest in is to overcome the orders passed by this Court in W.P.No.7347/93.

6. The 5th respondent in the counter affidavit filed had averred that the General Secretary of the 5th respondent is swearing to the said counter affidavit. It is averred in para-2 of the counter affidavit that the various allegations made in the affidavit filed in support of the Writ Petition are self-serving and are not true. The Writ Petition as framed is not maintainable and the writ petitioner as being *pro bono publico* has no *locus standi* to maintain the present Writ Petition. The writ petitioner is neither an aggrieved person by virtue of the impugned order nor an

interested person particularly when his rights, if any, much less as devotee are not affected in any manner. Even otherwise, the petitioner is having an effective alternative remedy of filing an Appeal before the Government and hence the writ petitioner is not entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and the Writ Petition is liable to be dismissed in limini. It is further stated that the 5th respondent-Sangham is a Society registered under Societies Registration Act on 5-1-1961 with registration No.3/1961. The 5th respondent was constituted with an object to encourage and promote the study and practice of Bhakti and to propagate efficiency of Nama Japam and to publish books, periodicals etc. The 5th respondent-Sangham is being maintained by its members successfully till recently from the date of its inception. The Institution was developed with the cooperation of the citizens, particularly in Satyanarayanapuram in Vijayawada and the deities of Mouleswara Swamy, Rama Mandiram, Sarada Mandiram, Krishna Mandiram, Venkateswara Swamy Temple and Anjaneyaswamy were installed in the premises. Several religious functions and Nama Sankeertanam had been performed in the Institution since long to achieve its objects. There was

never any complaint by anybody against the institution or its management. It is also further stated that the Institution is not able to perform its religious rituals as was done since four decades as the Institution was taken over by the Endowment Department. The Income of the Institution is hardly sufficient to meet the expenditure of the Executive Officer and its staff by way of salaries etc., and hence it became difficult to the 5th respondent to meet its religious rituals and devotional programmes as per the objectives of the Society. Hence the 5th respondent submitted a representation to the Commissioner, Endowment Department to accord permission for adaptation of the Institution by Sri Srungeri Jagadguru Maha Samsthanam which expressed its willingness to adopt the Institution. As there was no response from the Commissioner, Endowments Department, the 5th respondent also approached the Principal Secretary, Endowments Department and the Principal Secretary, Endowments Department was pleased to consider the request and accorded permission by allowing Srungeri Mutt to take over the management of the Institution under Section 145 of A.P. Charitable and Hindu Religious Institution and Endowments Act 1987, vide its proceeding dated 12-6-2007 in Memo No.21225/Endts.IV(1)/2007-1.

There is no illegality or irregularity in passing the order by the Principal Secretary, Endowments Department in the interest of the Institution. It is also further stated that the writ petitioner who is neither aggrieved person against the impugned order dated 12-6-2007 nor the person interested, is not entitled to question the impugned order on any grounds. Even otherwise, the rights/interests of the writ petitioner if any as being the devotee are not affected in any manner by the proposed action of the adoption of the 5th respondent by the Srungeri Mutt for the purpose of its management. It is only for the purpose of achieving the objects of the 5th respondent-Institution it is sought to be adopted and the religious functions and the rituals will be continued as was done earlier without there being any dearth of funds and hence the writ petitioner has no locus standi to question the impugned order according to Law. It is also further stated that the allegation that the Executive Officers appointed were being transferred or removed at the instance of the members of the Sangham who had developed vested interest over the temple and its properties is false and incorrect. It is further stated that it is also not correct to allege that the management of the Kshetram by the members of the Society was not liking to the devotees

and as such the devotees had been resisting the management of the Kshetram by the members and had been requesting the Department to appoint a regular Executive Officer to manage the affairs of the Kshetram etc. It is also further stated that it is also not correct to allege that the members of the Sangham who had developed vested interest in the properties of the Kshetram were not allowing the appointment of the Executive Officers and had filed Writ Petition before this Court and the said Writ Petition was filed by the 5th respondent questioning the order of appointment of Executive Officer in accordance with Law and hence the same cannot be found fault with the 5th respondent. It is also further stated that the allegations in para-6 of the writ affidavit are not true and correct. It is also not correct to allege that the members of the 5th respondent having failed in all their attempts to gain control over the temples had adopted a dubious method of approaching the 1st respondent for adoption of the Kshetram with Sri Dakshinanneya Srungeri Sarada Peetam, Nallakunta and the said allegations are self-contradictory. It is also further stated that it is not correct to allege that the Principal Secretary, Endowment Department has no power under the Act for the proposal submitted by members of the

society. Admittedly the Principal Secretary is an higher authority than the Commissioner and he is entitled to consider the request of the 5th respondent-Institution and pass orders accordingly. It is further stated that the Principal Secretary after examining the request of the 5th respondent Institution passed the impugned order and directed the Commissioner, Endowments Department to take necessary further action. It is also not correct to allege that the interest of devotees is affected by the orders of the Principal Secretary in the ground of incompetence and hence the allegation that adoption or amalgamation of the Institution can only be done by the Commissioner are false and incorrect. It is equally false to allege that the Institution to which the Sangham is being sought to be adopted itself is not in a condition to manage its own affairs at Hyderabad. It is also not correct to allege that the members of the Sangham being not digested by the appointment of Executive Officer and its staff, had adopted this modus operandi of doing away with the appointments that were made pursuant to the direction of this Court. It is also not correct to allege that the 5th respondent Sangham became defunct and has no say over the affairs of the Institution and it cannot represent the temple. Further, it is stated that all the allegations are

made by the writ petitioner to suit his purpose and respondents baseless and self-serving. It is also further stated that Srungeri Mutt with which the 5th respondent Institution is adopted by the orders of the Principal Secretary, Endowments Department dated 12-6-2007 had made all arrangements for taking over the management of the Institution. The writ petitioner without impleading the said Institution i.e., Srungeri Mutt filed the aforesaid Writ Petition and obtained exparte order by suppressing the true and correct facts and hence Sri Srungeri Mutt is a necessary and proper party and the Writ Petition is bad for want of necessary party according to Law and if the interim order is allowed to continue the 5th respondent will suffer irreparable loss and prejudice.

7. The learned Government Pleader for Endowments would submit that this is a question where the power of the Government to issue the impugned memo is being called in question and this being a pure question of Law, the same may be decided in the light of different provisions of the Act and the Writ Petition itself may be disposed of finally.

8. Sri Hanumantha Rao, the learned Counsel representing the writ petitioner would maintain that a devotee interested in the affairs of the Institution has *locus*

standi to maintain the Writ Petition and hence to contend that the devotee has no *locus standi* to maintain the Writ Petition definitely cannot be sustained. The learned Counsel also had drawn the attention of this Court to Section 145(1) of the Act and would m that in the light of such specific power, it cannot be said that the Government under the guise of exercising general powers issued the impugned memo. The Counsel also had drawn the attention of this Court to Section 2(18) of the Act and further had drawn the attention of this Court to the language employed in Section 3(5) of the Act. The learned Counsel while further elaborating his submissions had pointed out to para-4 of the impugned order and would maintain that no further option had been left to the Commissioner, Endowments Department and in the light of the same the powers of the competent authority has ordained by the statute virtually had been usurped by the Government and this is impermissible. Hence, the learned Counsel would contend that unless and until the proper procedure as specified by the provisions of the Act are followed, the impugned action cannot be further proceeded with and the Memo as such is liable to be quashed.

9. The learned Government Pleader for Endowments had taken this Court through the contents of

the Memo and had drawn the attention of this Court to the last portion. The learned Government Pleader in all fairness would contend that it is no doubt true in para-4 some expression relating to amalgamation had been made, but however the further directions issued in para-5 would clarify the situation. The learned Government Pleader also would maintain that it is not as though the Government had usurped the powers. The Government is entitled to issue suitable directions in the light of the general power available under the statute and that is what had been exactly done by this issuance of Memo and in pursuance thereof, it is for the Commissioner, Endowments Department to take further appropriate action. When that being so, to contend that the impugned Memo itself is without jurisdiction definitely cannot be sustained. The learned Government Pleader also had drawn the attention of this Court to the relevant provisions of the Act. Incidentally, the Counsel would contend that on a careful reading of the language of Sections 145(1) and (3) of the Act, it cannot be said that the general power of the Government cannot be exercised at all. The learned Government Pleader would conclude that in the peculiar facts and circumstances, since at the instance of the Institution as such this Memo, the impugned

proceedings had been issued, even in the interest of the Institution it would not be just and proper to disturb the said Memo and hence the Writ Petition is liable to be dismissed.

10. Sri Rajasekhar, the learned Counsel representing the 5th respondent had taken this Court through the stand taken in the counter affidavit and would contend that even if the language of Section 2(18) of the Act if carefully examined, the right of a mirasidar or a devotee being limited, in a matter of this nature where the interest of the Institution to be protected, such devotee cannot be permitted to maintain a Writ Petition. Even otherwise, the learned Counsel would submit that this is a case where the writ petitioner cannot be said to be a "person interested" and strong reliance was placed on the decision of the Apex Court in **J.M.Desai Vs. Roshan Kumar** [1]**.** While elaborating his submissions, the learned Counsel also pointed out to Sections 145(1) and (3) of the Act and also Sections 8, 4, 5, 2(6) and Section 3(5) of the Act as well and would maintain that the object of the Act also to be kept in mind. If the object of the Act if carefully examined, inasmuch as the interest of the Institution to be kept in mind and in view of the fact that general power had been conferred on the Government, the Government is

definitely empowered to issue such Memo with further directions to the Commissioner, Endowments Department and the same cannot be found fault. The Counsel also incidentally had pointed out to Section 5 of the Act. Ultimately, the learned Counsel would contend that the important question that may have to be always considered is the interest of the Institution and when the Institution, in the peculiar facts and circumstances, approached the Government, the Government after careful consideration of the representations, had taken a decision and issued the Memo with further directions to the Commissioner, Endowments Department and it is for the Commissioner, Endowments Department to take up the further action. In the light of the same, the Writ Petition is liable to be dismissed.

11. In the light of the submissions advanced at length by the Counsel on record, the first and the foremost question to be decided is whether the writ petitioner has *locus standi* at all to question the impugned Memo. It may be appropriate to have a look at the impugned Memo and the same reads as hereunder :

Government of Andhra Pradesh
Revenue (Endowments-IC) Department
Memo No.21225/Endts-IV(1)/2007-1 Dt. 12-6-2007

Sub: Endowments Department – Krishna District – Sri Siva Krishna Kshetram, Ramnagar, Vijayawada, Krishna District – Request for adoption by Sri Sringari Jagadguru Maha Mahasamsthanam, Nalla Kunta, Hyderabad – Permission – Accorded – Orders – Issued.

Ref: 1. From the President Sri Rama Nama Sankeerthana Sangam, Vijayawada, Krishna District, representation Dt. Nil.

2. The Representative (Power of Attorney) Sri Sringeri Jagadguru Mahasamsthanam, Hyderabad Letter dt.25-4-2007

3. Govt. Memo No.21225/Endts.IV(1) 2007-1, dt.30-4-07.

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The President Sri Rama Nama Sankeerthana Sangham, Vijayawada, Krishna District in his representation 1st cited has requested the Government for permission to adopt the institution, 'Siva Rama Krishna Kshetram', Vijayawada permanently by Sri Dashinammaya Sri Sringeri Sarada Peetham, Sringeri.

2. The Representative of Sri Sarada Peetham in his letter 2nd cited has submitted that Sri Sharada Peetam, Sringeri, is willing to take over the Management of the institution and run it according to sampradaya provided that the Endowments Department is willing to handover the management to the Peetham by way of adoption under Section 145(1) of the Endowments Act.

3. After careful examination of the above request it has been noticed that the Sringeri Mutt is willing to adopt this institution and the request for adoption

has come from the Trust Board as well Government have therefore opined that the above adoption is beneficial to the institution 'Siva Rama Krishna Kshetram Vijayawada' since the management will be in the hands of reputed Mutt like Sringeri.

4. Government therefore accord permission to allow Sringeri Mutt to take over the management of Siva Ramakrishna Kshetram, Vijayawada, under Section 145(1) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act 1987.

5. The Commissioner of Endowments, Hyderabad shall take necessary further action accordingly.

I.V. Subba Rao,
Prl. Secretary to Govt.

12. Section 2 of the Act deals with **Definitions.**

Section 2(6) of the Act defines "**Commissioner**" as :

'Commissioner' means the Commissioner and the Additional Commissioner appointed under sub-section (1) of Section 3 and includes every officer who for the time being exercises the powers and performs the functions of a Commissioner under this Act or the rules made thereunder in respect of any charitable or religious institution or endowment as specified in sub-section (5) of Section 3.

Section 2(18) of the Act dealing with '**person having interest'** as an inclusive definition and the said provision reads as hereunder :

(a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the

math belongs;

(b) in the case of a charitable institution or endowment or a religious institution other than a math or a religious endowment a person who is entitled to attend at or is in the habit of attending the performance of service, charity or worship connected with the institution or endowment or who is entitled to partake or is in the habit of partaking in the benefit of any charity or the distribution of gifts thereat;

(c) in the case of a specific endowment a person who is entitled to attend at or is in the habit of attending the performance of the service or charity or who is entitled to partake or is in the habit of partaking in the benefit of the charity.

13. Strong reliance was placed on the decision of the Apex Court in the decision referred (1) supra wherein the Apex Court at paras 12, 36, 37 and 38 observed :

> "According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person" and in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character, and is a "stranger" the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances. This takes us to the further question : Who is an "aggrieved person" ? And what are the qualifications requisite for such a status ? The expression "aggrieved person" denotes an elastic, and, to an extent, an

elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or 'standing' to invoke certiorari jurisdiction.

……

……..

It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily, fall in any of these categories : (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody of meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. They indulge in the past-time of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety

or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones: a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer-circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All the persons in this outer zone may not be "persons aggrieved".

To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are : Whether the applicant is a person whose legal right has been infringed ? Has he suffered a legal wrong or injury, in the sense, that his interest, recognized by law, has been prejudicially and directly affected by the act or omission of the authority, complained of ? Is he a person who has suffered a legal grievance, a

person “against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title so something ? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public ? Was he entitled to object and be heard by the authority before it took the impugned action ? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority ? If the statute, in the context of which the scope of the words “person aggrieved” is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community ? Or is it a statute dealing with private rights of particular individuals ?”

14. It is no doubt true that the concept of *locus standi* cannot be so liberally adopted. Here is a matter where the Institution approached the Government by making representations and on the strength of such representations, the impugned Memo had been made. The beneficiaries or devotees normally would be interested in the religious institution or a charitable institution. There may be several irregularities or illegalities. However, a broad proposition that a devotee or a worshipper at no point of time would be the affected party or the aggrieved party or such party would not fall

under the definition of “person having interest”, cannot be laid down. It is suffice to state that this would depend upon the facts and circumstances of a particular given case.

15. The next question to be decided is whether the Government has power at all to issue the impugned Memo. On a careful reading of the memo, though para-4 of the impugned Memo, is not happily worded, at para-5, specifically it had been specified that the further proceedings are to be taken up by the Commissioner, Endowments Department. In the light of the same, it cannot be said that the powers of the Commissioner, Endowments Department as a statutory authority as ordained by the provisions of the Act had been usurped by the Government.

16. Section 145 of the Act deals with **Adoption or amalgamation of institutions and endowments**. Section 145(1) and (3) of the Act read as hereunder :

> **Section 145(1):** Where the Commissioner has reason to believe that any religious institution is not capable of maintaining out of its funds, he may, in the interest of proper management of administration, subject to such restrictions and conditions as he may deem fit, direct the amalgamation or as the case may be, the adoption of such religious institution by any other religious institution having similar objects and capable of

managing such institution and there upon the trustee of the institution to which it is amalgamated or by which it is adopted shall maintain and administer such institution.

Section 145(3): Where the institution so amalgamated or as the case may be adopted under sub-section (1), subsequently found to be capable of being managed by itself, the Commissioner may in the interest of proper management of administration revoke the orders issued under sub-section (1), and thereupon the institution shall manage its affairs independently out of its funds.

Section 3(5) of the Act reads as hereunder :

"The Government may direct the Commissioner, Additional Commissioner, and every Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner appointed under sub-section (1) to exercise the powers and perform the functions conferred on or entrusted to the Commissioner, Additional Commissioner or Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case maybe, by or under this Act in respect of charitable or religious institutions or endowments".

Likewise, Sections 8, 4 and 5 of the Act read as hereunder :

Section 8: Powers and functions of Commissioner and Additional Commissioner :

(1) Subject to the other provisions of this Act, the administration of all charitable and Hindu religious

institutions and endowments shall be under the general superintendence and control of the Commissioner and such superintendence and control shall include the power to pass any order which may be deemed necessary to ensure that such institutions and endowments are properly administered and their income is duly appropriated for the purposes for which they were found or exist.

(2) Without prejudice to the generality of the foregoing provisions, the Commissioner shall exercise the powers conferred on him and perform the functions entrusted to him by or under this Act in respect of such institutions or endowments in the State as are included in the lists published under clause (a), clause (d) and clause (e) of Section 6.

(3) The powers and functions of the Additional Commissioner shall be such as may be determined by the Government from time to time.

(4) The Commissioner may delegate to a Deputy Commissioner any of the powers conferred on or functions entrusted to the Commissioner by or under this Act including the powers and functions of an Assistant Commissioner which may be exercised or performed by the Commissioner under sub-section (5) but not including the power and functions of the Commissioner under sub-section (1), Sections 6, 15, 49, 51, 66, 90, 92 and 132 in respect of any institutions or endowments or any class or group of institutions or endowments in the State subject to such restrictions and control as the Government may by general or special order lay down and subject also to such limitations and conditions, if any, as may be specified in the order

of delegation.

(5) The Commissioner may delegate to an Assistant Commissioner any of the powers conferred on or functions entrusted to the Commissioner by or under this Act except the powers and functions of the Commissioner under sub-section (1), Sections 6, 15, 49, 51, 66, 90, 92 and 132 in respect of any institution or endowment in the sub-division in charge of the Assistant Commissioner subject to such restrictions and control as the Government may, by general or special order, lay down and subject also to such limitations and conditions if any, as may be specified in the order of delegation.

(6) Notwithstanding anything in Sections 10 and 11, the Commissioner may, by order in writing, declare that the exercise and performance of all or any of the powers or functions by the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall be subject to such exceptions, limitations and conditions as may be specified in the order and he may himself exercise any power or perform the functions so expected.

Section 4 : Qualifications for appointment of Commissioner etc.:-

(1) A person to be appointed as the Commissioner, shall be one –

(a) who is holding or has held a post of the District Collector or a post not lower in rank than that of a District Collector in any other service in the State; or

(b) who is holding or has held a post in the Andhra Pradesh State Higher Judicial Service; or

(c) who has at least ten years practice as an

Advocate of the High Court of Andhra Pradesh or of the Supreme Court; or

(d) who has been holding the post of Additional Commissioner:

Provided that no person shall be eligible for appointment as Commissioner unless he has completed the age of forty-five years.

(2) the qualifications for appointment to the office of Additional Commissioner, Regional Joint Commissioner and Assistant Commissioner shall be such as may be prescribed.

(3) [***]

(4) [***]

(5) A person to be appointed as an Assistant Commissioner shall be one –

(a) who has been for not less than three years as an Advocate of the High Court of Andhra Pradesh, by direct recruitment; or

(b) who has been holding for not less than three years the post of Superintendent in the Endowments Department or the post of an Executive Officer of the prescribed grade, by promotion;

(c) who has been holding an equivalent post of Assistant Commissioner in any of the charitable or religions institutions or endowments published under clause (a) of Section 6 including a person in the service of the Tirumala-Tirupati Devasthanams, by transfer:

Provided that in the case of Deputy Commissioners and Assistant Commissioners the number of posts to be filled by direct recruitment shall not exceed one-fifth of the cadre strength of

each category.

Section 5: State to be divided into regions, divisions and sub-divisions for purposes of this Act :

For the purposes of this Act, the Commissioner shall with the previous approval of the Government divide the State into such number of regions and each such region into such number of divisions and each such division into such number of sub-divisions as he may deem fit. Each region shall be in the charge of Regional Joint Commissioner, each division shall be in the charge of a Deputy Commissioner and each sub-division shall be in the charge of an Assistant Commissioner:

Provided that it shall be lawful for the Government to appoint a Regional Joint Commissioner for more regions than one or a Deputy Commissioner for more divisions than one or an Assistant Commissioner for more sub-divisions than one.

17. In the light of the language employed in Section 145(1) and (3) read with the other provisions of the Act i.e., Sections 3 and 8 of the Act as well, and if the impugned Memo is carefully examined, the Government had issued the impugned Memo no doubt expressing the view in relation to the amalgamation in pursuance of the representations made which had been referred to keeping the interest of the Institution in view. It does not mean that the Commissioner, Endowments Department, the statutory authority, is totally denuded of his powers in this

regard. The Commissioner, Endowments Department is at liberty to further examine and take appropriate action in pursuance of the impugned Memo. It is needless to say that the interest of the Institution to be kept in mind as the primary question to be decided in matters of this nature. Hence, without expressing any further opinion, this Court is satisfied that though certain expressions used in para-4 of the impugned Memo are not happily worded, in the light of the further directions issued by the Government in the Memo, it cannot be said that the impugned Memo is totally without jurisdiction, but however, the same is clarified that in the light of the further directions issued, the Commissioner, Endowments Department to take further action in the matter in accordance with Law as ordained by the provisions of the Act. Section 145 of the Act had been introduced in pursuance of the recommendations made by Justice Kondaiah Committee. Sub-section (4) of Section 145 of the Act says:

> "*An appeal shall lie to the Government against the orders passed by the Commissioner under sub-section (1) or sub-section (3).*"

It is needless to say that the Government being an appellate authority, to be cautious in making positive directions exercising general powers under the Act, may

be, for the reason that the appellate remedy may become a formality. In view of the same, let the Commissioner, Endowments Department take appropriate decision in this regard in the interest of the Institution in accordance with Law being uninfluenced by the observations, if any, made in the impugned order. With the above observations, the Writ Petition is disposed of. In the light of the peculiar facts, in the interest of the Institution, let the Commissioner, Endowments Department, take an early decision, preferably within a period of four weeks from the date of receipt of this order. No order as to costs.

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Justice P.S.Narayana

Date : 21-9-2007

L.R. copy to be marked : YES / No

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[1] **AIR 1976 S.C. 578**